

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDWARD RIO, JR.)

For Appellant: Edward Rio, Jr.,,
in pro. per.

For Respondent: James T. Philbin
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Edward Rio, Jr., against proposed assessments of personal income tax and penalties in the total amount of \$12,663.61 for the year 1979.

Appeal of Edward Rio, Jr.

The sole issue presented by this appeal is whether appellant has established error in respondent's proposed assessments of personal income tax or in the penalties assessed for the year in issue.

Respondent received information indicating that appellant was required to file a California **personal income tax return** for 1979. Respondent so advised appellant, and demanded that he file the required return; appellant did not comply. Thereafter, respondent issued a notice of proposed assessment based upon information received from the California Employment Development **Department**. Respondent subsequently issued a second proposed assessment based upon appellant's receipt of rental income; **information** contained in appellant's 1977 return formed the basis for respondent's estimate of this **income**. **The proposed assessments** include penalties for failure to file a return, failure to file upon notice and demand, failure to pay estimated tax, and negligence. After due consideration of appellant's protest, respondent affirmed the proposed assessments, thereby resulting in this appeal.

It is well settled that respondent's determinations of tax are **presumptively** correct, and appellant bears the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case. (Appeal of K. L. Durham, supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) No such proof has been presented here.

On the basis of the evidence before us, we can only conclude that respondent correctly computed **appellant's** tax liability, and that the imposition of penalties was fully justified. **Respondent's** action in this matter will, therefore, be sustained.

Appeal of Edward Rio, Jr.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation **Code**, that ~~the~~ action of the Franchise Tax Board on the protest of **Edward Rio, Jr.**, against proposed assessments of personal income ~~tax~~ and penalties in the total amount of **\$12,663.61** for the year 1979, be and the same is hereby, sustained.

Done at Sacramento, California, this 5th day of April , 1983, by the State Board of **Equalization**, with Board **Members** Mr. Bennett, Mr. **Collis**, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

<u>William M. Bennett</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>-Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code Section 7.9